

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL JACKSON HOSEY

Appeal 2007-4467
Application 10/719,537
Technology Center 2800

Decided: November 30, 2007

Before CHUNG K. PAK, JEFFREY T. SMITH, and
LINDA M. GAUDETTE, *Administrative Patent Judges*.

PAK, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1 through 22, all of the claims pending in the above-identified application. We have jurisdiction pursuant to 35 U.S.C. § 6.

STATEMENT OF THE CASE

The subject matter on appeal is directed to “display devices and, in particular, but not exclusively, to a timekeeping device attached to a clip, wherein the clip can pivot and act as a stand for the display device...” (Spec. 1, para. 001). Further details of the appealed subject matter are recited in representative claims 1 and 16 reproduced below:

1. A timepiece comprising:
 - a casing;
 - a display device secured by the casing; and
 - a clip pivotally attached to the casing; and
 - wherein the clip is configured to be attachable to an object of interest and wherein the clip is configured to pivot in a position to maintain the display device in a substantially upright position when the attachment section is placed on substantially horizontal surface.

16. An apparatus comprising:
 - an electronic device having a display;
 - a casing configured to hold the electronic device; and
 - a clip pivotally attached to the casing, the clip configured to be attachable to an object of interest, the clip configured to be pivoted to form a stand for the apparatus.

As evidence of unpatentability of the claimed subject matter, the Examiner has relied upon the following references:

Lowdenslager	US 4,022,014	May 10, 1977
Kauker	US 5,540,367	Jul. 30, 1996
Pantet	US 5,781,512	Jul. 14, 1998
Sekiguchi	US 6,751,164 B1	Jun. 15, 2004
Gilmour	US 6,801,476 B2	Oct. 5, 2004

The Examiner has rejected the claims on appeal as follows:

1. Claims 1 through 4, 6, 7, 9, 12 through 14, 16, and 17 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Pantet and Kauker;
2. Claims 5, 8, 10, and 18 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Pantet, Kauker, and Sekiguchi;
3. Claims 11, 15, and 19 through 21 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Pantet and Kauker, and Gilmour; and
4. Claim 22 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Pantet, Kauker, and Lowdenslager.

The Appellants appeal from the Examiner's decision rejecting the claims on appeal under 35 U.S.C. § 103(a).¹

PRINCIPLES OF LAW, FACTS, ISSUES and ANALYSES

Under 35 U.S.C. § 103, the factual inquiry into obviousness requires a determination of: (1) the scope and content of the prior art; (2) the differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) secondary considerations (e.g., unexpected results). *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966). “[A]nalysis [of whether the subject matter of a claim would be obvious] need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the

¹ We limit our discussion to claims 1 and 16 consistent with 37 C.F. R. § 41.37(c)(1)(vii) (2005).

inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l v. Teleflex, Inc.*, 127 S. Ct. 1727, 1740-41 (2007), quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), see also *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1361 (Fed. Cir. 2006)(“The motivation need not be found in the references sought to be combined, but may be found in any number of sources, including common knowledge, the prior art as a whole, or the nature of the problem itself.”); *In re Bozek*, 416 F.2d 1385, 1390 (CCPA 1969)(“Having established that this knowledge was in the art, the examiner could then properly rely, as put forth by the solicitor, on a conclusion of obviousness ‘from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference.’”). “When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product . . . of ordinary skill and common sense.” *KSR Int’l v. Teleflex, Inc.*, 127 S. Ct. at 1742.

As evidence of obviousness of the subject matter defined by claims 1 through 4, 6, 7, 9, 12 through 14, 16, and 17 under 35 U.S.C. § 103(a), the Examiner has relied on the combined disclosures of Pantet and Kauker. The Examiner has found, and the Appellants have not disputed, that:

Pantet teaches a timepiece comprising: a casing (11, Fig. 1); a display device (3, Fig. 1) secured by the casing; and an attachment section (12, Fig. 1) pivotally attached to the casing; and wherein the attachment section is configured to be attachable to an object of interest ("a buckle or a small chain snap hook", col. 2, 11. 50-51) wherein the attachment section is

configured to pivot ("pivot the hinge", col. 2, ll. 53-57) in a position to maintain the display device in a substantially upright position when the attachment section is placed on a substantially horizontal surface (Fig. 2).

Compare Ans. 4 *with* Br. 4-12. Consistent with the above findings, we note that Pantet teaches at col. 2, ll. 49-57, that:

In the suspension position, the second part [i.e., the attachment section] may be suspended in a known manner, for example on a buckle or a small chain snap hook, and the first part [i.e., the casing] with the watch is suspended therefrom simply by the hinge which may play freely if necessary. In order to pass to the table position, it is sufficient to pivot the hinge until the two parts abut against each other and to place the second part (i.e., the attachment section] flat on a horizontal surface. Such movements do not cause any wear and tear.

As is apparent from the title and drawings of Pantet, its suspension and support device for a conventional watch is designed to provide a dual function, i.e., useful as a pocket watch and a table watch. See also Pantet, col. 1, ll. 4-18. As recognized by the Examiner (Ans. 4), Pantet does not mention that the attachment section of its suspension and support device is in the form of a clip.

The dispositive question is, therefore, whether one of ordinary skill in the art would have been led to modify the attachment section (second part 11) of Pantet's suspension and support device in the form of a clip within the meaning of 35 U.S.C. § 103(a). On this record, we answer this question in the affirmative.

As recognized by the Appellants (Br. 6), Kauker teaches at col. 1, ll. 10-11, that "[t]he pocket watch passed out [of] vogue in the early 20th

century” The Examiner has found, and the Appellants have not disputed, that:

Kauker teaches a loop watch, including a hanger (14, Fig. 1), comprising a carabiner clip (14c, 14d, Fig. 1). Such a clip is very functional and allows the watch to be attached to a wide variety of belongings such as backpacks, golf bags and any other attachable article (col. 1, 11.40-42), while not obstructing the hands and making the watch readily visible on various articles of both men's and women's clothing (col. 1, 11. 18-22).

Compare Ans. 4 with Br. 5-12. We find that Kauker teaches replacing the attachment section of the pocket watch with a strap connector and a clip so that it can be used as an attachment to articles of clothing, backpacks, golf bags, etc. (col. 1. 63-67 and col. 2, 11. 1-3).

Given the advantage of making the pocket watch taught by Pantet more trendy and marketable, and of retaining its dual functionality (a table watch and a carrying watch), we determine that one of ordinary skill in the art would have been led to modify the attachment section of Pantet in the form of a clip, without replacing a hinge connector arrangement with a strap connector, with a reasonable of expectation of successfully using it as both the carrying watch and the table watch. *KSR*, 127 S. Ct. at 1740 (“[W]hen a patent ‘simply arranges old elements with each performing the same function it had been known to perform’ and yields no more than one would expect from such an arrangement, the combination is obvious.”).

Thus, based on the factual findings set forth in the Answer and above, we determine that the preponderance of evidence weighs most heavily in favor of obviousness of the subject matter defined by claims 1 through 4, 6, 7, 9, 12 through 14, 16, and 17 within the meaning of 35 U.S.C. § 103(a).

As to the remaining § 103(a) rejections, the Appellants have relied on the same arguments discussed above (Br. 11). Thus, for the same reasons set forth above and in the Answer, we determine that the preponderance of evidence weighs most heavily in favor of obviousness of the subject matter defined by claims 5, 8, 10, 11, 15, and 18 through 22 within the meaning of 35 U.S.C. § 103(a).

Accordingly, we affirm the Examiner's decision rejecting all of the claims on appeal under 35 U.S.C. § 103(a).

ORDER

In view of the forgoing, the decision of the Examiner is affirmed.

TIME PERIOD

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

tc

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